



January 31, 2001

Mr. John B. Dahill
Advisory Chief
Dallas County
411 Elm Street
Dallas, Texas 75202

OR2001-0370

Dear Mr. Dahill:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 143804.

The Dallas County District Attorney (the "D.A.") received a request for various information, including the personnel files of two named individuals. You indicate in correspondence to the requestor that the D.A. has no information responsive to some of the request. You represent to this office that the requestor has been provided all of the information held by the D.A. that is responsive to the request, except for the information you have marked in the submitted exhibits C and D. You assert that this marked information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We agree that a copy of a Texas driver's license and a Texas driver's license number, contained in exhibit D and marked by you, must be withheld under section 552.130.

Section 552.117 provides in relevant part:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

- (1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;
- (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024;

Gov't Code § 552.117(1), (2). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You have submitted election forms completed by the two employees of the D.A. whose information is at issue in the present request. *See* Gov't Code § 552.024. These forms elect confidentiality for the employee's home address, home telephone number, social security number, and information that reveals whether the employee has family members. However, we note that these election forms are indicated to have been completed *after* the D.A. received the present request.¹ The D.A. may only withhold information under section 552.117(1) in response to the present request to the extent the employee made a request for confidentiality under section 552.024 *prior to* the date on which the present request was made. Exhibits C and D each also contain section 552.024 election forms that are dated prior to the D.A.'s receipt of the present request, but these forms each elect confidentiality only for the home address and home telephone number information of the employee. Thus, based on the information provided this office, the D.A. may not withhold under section 552.117(1) the social security number of the employee² or information that reveals whether the employee has family members. Exhibit D contains correspondence from the Texas Commission on Law Enforcement Officer Standards and Education which indicates that the employee may have been a police applicant. Therefore, we also call your attention to the above-quoted section 552.117(2), which provides that if the employee is a *peace officer*, the section 552.117 information must

¹You state that the request was received on November 3, 2000, and the section 552.024 election forms at issue are dated November 8, 2000 and November 10, 2000.

²The social security number information may nevertheless be excepted from disclosure under section 552.101, as discussed below.

be withheld regardless of whether the employee made a section 552.024 election. *See also* Code Crim. Proc. Art. 2.12(5) (defining a peace officer as including an investigator for the D.A.). In the event the employee is a peace officer as defined in article 2.12 of the Code of Criminal Procedure, or in case the employee made a *timely* section 552.024 election for the employee's social security number and information that reveals whether the employee has family members, we agree that the D.A. must withhold the information you have marked. If either of these conditions is met, we have also marked additional information that must be withheld under section 552.117. Otherwise, however, we conclude that only the employee's home address and home telephone number information is excepted under section 552.117.³

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 thus encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). A public employee's allocation of his salary to a *voluntary* investment program offered by his employer is a personal investment decision, and information about it is excepted from disclosure by a common law right of privacy if the transactions are not funded in whole or in part with public monies. Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1992) (deferred compensation plan). Where a transaction is funded in part by the state, however, it involves the expenditure of public monies in which there exists a legitimate public interest and the transaction therefore is not protected by privacy. Open Records Decision No. 600 (1992). We agree that some of the information you have marked constitutes personal financial information, and we have marked additional information that, if released, reveals a personal financial decision. Assuming the information pertains to voluntary decisions made by the individual and the transactions are not funded in whole or in part with public monies, we find the marked financial information must be withheld under section 552.101 in conjunction with the common law right to privacy.

In addition to common law privacy, section 552.101 requires the D.A. to withhold information made confidential by statute. In the event the social security number of either employee is not confidential under section 552.117 (as explained above), this information may nevertheless be subject to required withholding under section 552.101. A social security

³This includes the individual's *former* home addresses and telephone information, as well as a mobile telephone number of the individual as long as the account is not for official business and is not paid for with public monies. *See* Open Records Decision Nos. 622 (1994), 506 at 5-6 (1988).

number is excepted from required public disclosure under section 552.101 of the Act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994).

The submitted exhibits include copies of Employment Eligibility Verification Forms, otherwise known as a Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of a Form I-9 under the Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that these forms are confidential under section 552.101 and must be withheld in their entirety.

The exhibits also includes copies of employee W-2 and W-4 forms, which are excepted from disclosure in their entirety by section 6103(a) of title 26 of the United States Code. Open Records Decision No. 600 (1992). In addition, information on a federal W-2 form regarding the amount of exemptions claimed, federal income and FICA tax withheld, and total FICA wages is also excepted by section 6103(a) of title 26 of the United States Code. Open Records Decision No. 226 (1979). We have therefore marked for redaction this information.

Finally, the submitted documents include criminal history record information ("CHRI"). Criminal history record information generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We agree that the CHRI you have marked must be withheld.

In summary, unless otherwise provided above, the information you have withheld is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Act. We note that absent a timely section 552.024 election and unless section 552.117(2) is applicable, the social security number and family member information is not protected under section 552.117, and that this information is therefore subject to release, except the social security numbers may be excepted under section 552.101 as provided above. We have marked additional information, beyond that which you marked, that is or may be confidential as discussed herein. For your convenience, we have identified with red flags the specific documents that contain our markings. You must release the remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

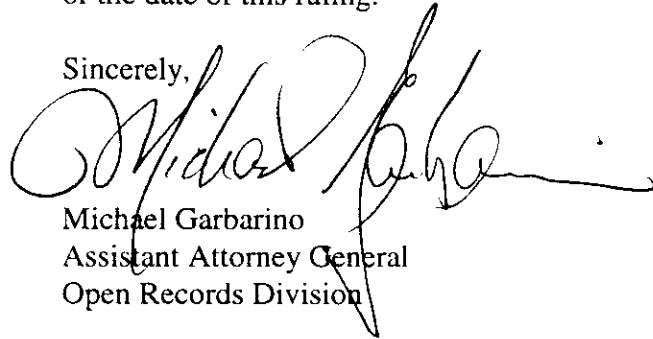
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", written over the typed name and title.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 143804

Encl. Submitted documents

cc: Mr. Paul Jordan
P.O. Box 154248
Irving, Texas 75015-4248
(w/o enclosures)